

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA**

PATRICK LEE SAMPSON,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. CIV-12-1282-F
	)	
H.A. RIO, JR. – WARDEN,	)	
LAWTON CORRECTIONAL	)	
FACILITY,	)	
	)	
Defendant.	)	

**ORDER**

United States Magistrate Judge Suzanne Mitchell issued a Report and Recommendation on July 16, 2013, recommending the dismissal of plaintiff's complaint without prejudice for failure to obtain service upon defendant within the time prescribed by Rule 4(m), Fed. R. Civ. P. Magistrate Judge Mitchell advised plaintiff of his right to file an objection to the Report and Recommendation by August 5, 2013 and specifically advised that failure to make a timely objection waives the right to appellate review of both factual and legal questions therein contained.

On July 18, 2013, the court received a letter from plaintiff dated July 11, 2013 (doc. no. 14) which appears to be in response to Magistrate Judge Mitchell's order of June 13, 2013. In her order, Magistrate Judge Mitchell ordered plaintiff to show cause why his complaint should not be dismissed without prejudice for failure to serve defendant as required by Rule 4(m). Plaintiff, in the letter, states that he is "trying to get things done on my case" and needs to "add 3 more people to my lawsuit." He also states that he "can't get any records from my medical jacket, that

will show there's no way LCF is right about this suit" and that he has been "on lock down since June off and on again."

Because the letter was sent prior to the issuance of the Report and Recommendation, the court declines to construe it as an objection to the Report and Recommendation. With no objection being filed to the Report and Recommendation within the time prescribed, the court accepts, adopts and affirms the Report and Recommendation in its entirety. The complaint and action against defendant shall be dismissed without prejudice pursuant to Rule 4(m).


In his letter, plaintiff, as stated, requests to add three more people to his lawsuit. The court denies plaintiff's request. The court may deny a request to file an amended complaint when the amended complaint would be futile, i.e. subject to dismissal. Watson ex rel. Watson v. Beckel, 242 F.3d 1237, 1239-40 (10<sup>th</sup> Cir. 2001) ("[P]roposed amendment is futile if the complaint, as amended, would be subject to dismissal.") Plaintiff does not identify the reason why he wants to add the three individuals to the lawsuit. However, the court assumes the reason plaintiff wants to add the three individuals relates to their alleged involvement in the January 2011 incident referred to in the complaint. Plaintiff had a two-year limitations period – or until January 2013 – in which to file his action against these individuals. McCarty v. Gilchrist, 646 F.3d 1281, 1289 (10<sup>th</sup> Cir. 2011); *see also*, Braxton v. Zavaras, 614 F.3d 1156, 1159 (10<sup>th</sup> Cir. 2010) ("In a § 1983 action, state law governs issues regarding the statute of limitations and tolling . . . .") Although the original complaint was timely filed, the court concludes that plaintiff cannot satisfy the conditions set forth in Rule 15(c), Fed. R. Civ. P., for any amended complaint adding the new individuals to relate back to the original complaint. And the court finds no basis for tolling the statute of limitations.

Because plaintiff seeks to add the three new individuals after the statute of limitations has run, the court concludes that any amended complaint would be futile.

Therefore, the court, as stated, denies plaintiff's request to add additional parties to his lawsuit.

Accordingly, the Report and Recommendation issued by United States Magistrate Judge Suzanne Mitchell on July 16, 2013 (doc. no. 13) is **ACCEPTED**, **ADOPTED** and **AFFIRMED**. Plaintiff's complaint and action against defendant is **DISMISSED WITHOUT PREJUDICE** pursuant to Rule 4(m), Fed. R. Civ. P. Plaintiff's request to add three additional individuals as defendants to this lawsuit is **DENIED**.

DATED August 21, 2013.

  
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STEPHEN P. FRIOT  
UNITED STATES DISTRICT JUDGE

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